

June 30, 2008

TO: **ALL TRUSTEES OF TRUST FUNDS AND  
THOSE LIBRARY TRUSTEES HOLDING THE *PRINCIPAL* OF TRUST  
FUNDS IN THEIR CUSTODY**

Re: SB 377 Relative to the Application of the Prudent Investor Rule to Town Trust Funds

Senate Bill 377 was signed by Governor Lynch on June 26, 2008 and will become effective on **August 25, 2008**. This new law will provide Trustees of Trust Funds and, in some cases, Library Trustees with greatly expanded choices for the investment of the privately donated trust funds held in their custody. SB 377 changes laws that have been in effect for many years and this letter is designed to familiarize Trustees with the opportunities, duties, and responsibilities contained in the new law.

- The trusts affected by the new law include cemetery perpetual care funds, and *privately donated* funds for parks, cemeteries, scholarships, the poor and needy, beautification projects, etc. It does not include any *taxpayer-funded* items including capital reserve funds and/or any trusts created under RSA 31:19-a. The investment standards for taxpayer-funded items are governed by other sections of the Statutes and are not affected by the new law.

The current investment standard for the privately donated funds administered by Trustees of Trust Funds is found in RSA 31:25 and RSA 31:25-b. RSA 31:25 lists the types of investments that are currently “legal” for investment by Trustees of Trust Funds while RSA 31:25-b sets the investment standard. Until **August 25, 2008** all Trustees of Trust Funds, and any Library Trustees holding the principal of privately donated funds, are required to invest these funds according to a very conservative standard known as the **Prudent Man Rule**. On **August 25, 2008** the Trustees of Trust Funds and Library Trustees will have the legal authority to vote to change their investment standard from the Prudent Man Rule to the Prudent Investor Rule under certain circumstances specified in the new law.

- What is the difference between the Prudent Man Rule and the Prudent Investor Rule?

Under the *Prudent Man Rule* **each investment** is considered and judged on its individual merits and must be of the highest investment quality with little or no risk to the preservation of principal.

Under the *Prudent Investor Rule* no category or type of investment is deemed inherently imprudent. Instead suitability to the **overall** portfolio's goals and objectives is considered to be the determining factor. However, while the Trustees have greater flexibility in portfolio management, speculation or outright risk taking is not sanctioned by the Rule.

*[Please note if the language of a particular will or trust instrument specifies the investment standard to be the Prudent Man Rule, the Trustees may not change the standard for that specific trust fund without first obtaining permission from the Probate Court.]*

- Can the Trustees of Trust Funds simply vote to adopt the Prudent Investor Rule after August 25, 2008?
  - The Trustees should decide whether or not a change in the investment standard based on their short and long-term goals and objectives is appropriate and if the answer is yes, the Trustees must comply with the following new requirements:

“Application of Prudent Investor Rule. The trustees of trust funds may manage and invest such funds in accordance with the prudent investor rule under RSA 564-B:9-901 – RSA 564-B:9-906 without regard to the investment limitations of RSA 31:25 and RSA 31:25-a, **provided, however, the trustees of trust funds:**

**I. Notify the attorney general in writing of their decision to invest according to the prudent investor rule; and**

**II. Hire or employ the trust department of a bank or a brokerage firm to provide investment advice and assistance under RSA 31:38-a, III.”** (Emphasis added)

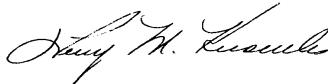
**PLEASE NOTE:** *Adoption of the Prudent Investor Rule under SB 377 does not authorize the Trustees of Trust Funds and/or Library Trustees to adopt a spending policy (see RSA 292-B:2 V-d). Principal and all capital gains in permanently restricted (income only) trust funds remains restricted and cannot be expended even if the Prudent Investor Rule has been adopted.*

No matter which investment standard the Trustees select they must adopt an investment policy for all investments made by them or by their agents for any trust funds in their custody in conformance with the provisions of applicable statutes, review and confirm the investment policy at least annually and file a copy of the investment policy with the Attorney General.

A copy of the final version of Senate Bill 377 is enclosed for your information. If any town or city would like to host an informational session on the new law for Trustees of Trust Funds and Library Trustees as well as other officials in their town/city and the surrounding communities we would be pleased to attend and to provide additional information and training on the new law and its implications. Please contact Audrey Blodgett at [audrey.blodgett@doj.nh.gov](mailto:audrey.blodgett@doj.nh.gov) to schedule a session.

If you have any questions please do not hesitate to contact our office.

Very truly yours,



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Enclosure

cc: Department of Revenue, Municipal Services Division  
Jerry Little, New Hampshire Bankers' Association